IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.334 OF 2006

Viranna Someshekhar Hulgeri ...Applicant
vs.
Netaji Appasaheb More and another ...Respondents

Mr.Girish Agrawal i/b M/s.R.M.Agrawal & Associates for the Applicant
Mr.U.V.Nikam,A.P.P. for State
Mr.V.V.Purwant for Respondent No.1

CORAM: A.S.OKA,J.
DATE : OCTOBER 6,2006.

ORAL JUDGMENT:

1. Rule. Shri Purwant waives service for Respondent No.1. Learned A.P.P. waives service for Respondent No.2. Considering the facts and circumstances of the case, Revision Application is taken up for final hearing forthwith.

2. The Applicant is the accused in a complaint filed by the first Respondent under section 138 of the Negotiable Instruments Act, 1881. The complaint resulted in conviction of the Applicant. The substantive sentence awarded is of imprisonment for one year. The Applicant was directed to pay compensation of Rs.15,000/-. An Appeal was preferred by the Applicant against the said order of conviction and sentence to the Sessions Court. There was a delay of six days in preferring the Appeal. By impugned Judgment and Order dated 9th March 2006, application for condonation of delay was rejected by the learned Sessions Judge, Solapur.

3. The learned Advocate for the Applicant on instructions of the Applicant pointed out that the compensation amount has

been deposited in the Trial Court. He states that there is sufficient explanation for delay of six days. Shri Purwant opposes the prayer for condonation of delay.

4. I have considered the submissions. The delay in preferring the Appeal against the order of conviction was only six days. While considering the Application for condonation of delay under section 5 of the Limitation Act, 1963, the Court was required to adopt a liberal approach. Considering the reason given in paragraph 4 of the impugned order, I find that the learned Judge has adopted hypertechnical approach. This was a fit case for condonation of delay. Accordingly, delay in preferring the Appeal deserves to be condoned.

5. The Applicant has already deposited compensation amount of Rs.15,000/-. Now the Appeal against conviction will have to be heard. As the compensation amount has already been deposited and as the Applicant has already undergone sentence for 29 days, the order of sentence will remain suspended till the final disposal of the Appeal subject to condition that the Applicant will cooperate with the Sessions Court for early disposal of the Appeal. If the Applicant does not cooperate, the Sessions Judge is entitled to revoke the order of suspension.

6. Hence, I pass the following order :

i) Impugned Judgment and Order dated 9th March 2006 is quashed and set aside.

ii) Criminal Misc.Application No.332 of 2005 is allowed. Delay in filing the Appeal is condoned.

iii) The Sessions Judge will register the Appeal preferred by the Applicant and the Appeal shall be heard as expeditiously as possible.

iv) Till the final disposal of the Appeal, the order of sentence passed by the Trial Court will remain suspended subject to condition that the Applicant will co-operate with the Sessions Court for expeditious disposal of the Appeal. Any attempt made by the Applicant to delay the hearing of the Appeal will be a ground to revoke the order of suspension of the sentence.

v) The Applicant is personally present in the court today. The parties are directed to appear before the learned Sessions Judge, Solapur on 20th November 2006 at 11.00 a.m.

vi) All contentions of the parties on merits of the Appeal are expressly kept open.

vii) Revision Application is partly allowed in above terms.

JUDGE